

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-072-E - ORDER NO. 1999-590  
AUGUST 19, 1999

IN RE: Application of Carolina Power & Light	)	ORDER APPROVING
Company to Transfer Certain	)	LEASE TRANSFER AND
Telecommunications Assets to Interpath	)	STIPULATION
Communications, Inc.	)	

✓*MR*

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Carolina Power & Light Company (CP&L) to transfer certain telecommunications assets and lease certain real property to Interpath Communications, Inc. (Interpath), a CP&L subsidiary. The property and assets exceed one million dollars in value. The Application states that CP&L wishes to maximize the service and revenue generation capability of its telecommunications system, while ensuring that the cost of the telecommunications services required to meet CP&L's electric service business needs are kept as low as reasonably possible. Subsequent to the transfer of assets, if approved, CP&L will procure its telecommunications services needs from Interpath pursuant to a Master Services Agreement. The filing was pursuant to S.C. Code Ann. Section 58-27-1300 (Supp. 1998) and Commission Regulations 103-830 and 103-834.

Pursuant to the instructions of the Commission's Executive Director, CP&L published a Notice of Filing, one time, in newspapers of general circulation in CP&L's service area. A Petition to Intervene was filed by the Consumer Advocate for the State of

South Carolina (the Consumer Advocate). Subsequent to the intervention, CP&L and the Consumer Advocate entered into a Stipulation Agreement. CP&L now moves for expedited review of its Application.

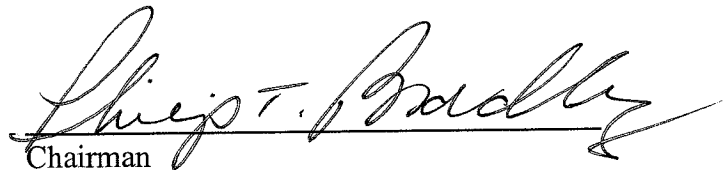
We have considered this matter, and hold that the transfer and lease are reasonable and in the public interest; and should be approved; however, we also hold that the Stipulation reached between CP&L and the Consumer Advocate is reasonable and in the public interest, and should be approved as part of the transaction. We hereby adopt the Stipulation as a part of this Order, and attach it hereto as Exhibit A to this Order. It appears that the Master Services Agreement provides that the payments by CP&L to Interpath for the telecommunications that CP&L had previously provided internally shall approximate the costs CP&L would have incurred had it retained these assets for calendar year 1999. Thereafter, the parties may negotiate appropriate and reasonable adjustments to these rates due to advances in technology, additional replacement systems or equipment, significant changes in circumstances or other factors affecting prices. For any additional services provided by Interpath, charges by Interpath to CP&L shall be made pursuant to Interpath's filed tariffs, if such tariffs exist. If the services provided are not tariffed, the prices charged by Interpath to CP&L shall be negotiated market-based charges.

The Stipulation between CP&L and the Consumer Advocate resulted from discussions, wherein both parties agreed to various changes to the four agreements that have been entered into by and between CP&L and Interpath. Among other provisions, the

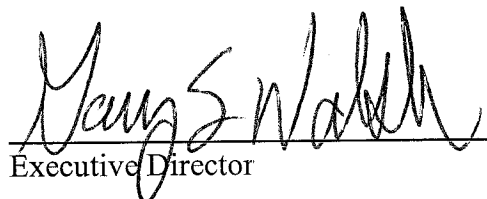
agreements in question become subject to codes of conduct approved by this Commission  
in Docket No.1999-077-E. Again, we hereby adopt the Stipulation.

This Order shall remain in full force and effect until further Order of the  
Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)

DOCKET NO. 1999-072-E - ORDER NO. 1999-590  
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EXHIBIT A

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## STIPULATION BETWEEN CAROLINA POWER & LIGHT COMPANY AND THE SOUTH CAROLINA CONSUMER ADVOCATE

On February 2, 1999 Carolina Power & Light Company ("CP&L") filed an application with the South Carolina Public Service Commission for authority to transfer certain telecommunication assets to a CP&L subsidiary, Interpath Communications, Inc. On April 29, 1999 the South Carolina Consumer Advocate ("the Consumer Advocate") filed a petition to intervene in this proceeding, stating that the Consumer Advocate had not fully developed his position on this matter, and needed time to further review the filing. The Consumer Advocate further stated that he did not necessarily request that this matter be set for hearing.

Since that time CP&L and the Consumer Advocate have been involved in discussions intended to resolve any concerns the Consumer Advocate may have with regard to this asset transfer. As a result of these discussions the Consumer Advocate and CP&L have agreed that the following changes should be made to the four agreements that have been entered into by and between CP&L and Interpath Communications, Inc. With these changes, the Consumer Advocate does not oppose the asset transfer that is the subject of CP&L's February 2, 1999 Application to the Commission.

The agreed upon changes are as follows:

1. With regard to the Asset Agreement between CP&L and Interpath, a new paragraph 18 will be inserted that reads as follows:

This Agreement shall be subject to, and applied and interpreted in accordance with, the Codes of Conduct approved by the North Carolina Utilities Commission in Docket No. E-2, Sub 740 and the South Carolina Public Service Commission in Docket No. 1999-077-E.

Paragraph 6 shall be amended by inserting the following sentence at the end of such paragraph:

CP&L shall be compensated for the use of its structures (poles, conduits, etc.) at the higher of market value or CP&L's fully distributed cost.

2. With regard to the Master Agreement for Telecommunication Services entered into between CP&L and Interpath, a new paragraph 14 shall be inserted that states as follows:

This Agreement shall be subject to, and applied and interpreted in accordance with, the codes of conduct approved by the North Carolina Utilities Commission in Docket No. E-2, Sub 740 and the South Carolina Public Service Commission in Docket No. 1999-077-E.

The original paragraph 14 shall be renumbered paragraph 15.

In paragraph 4, the last sentence shall be reworded as follows:

"If the services provided are not tariffed services, the prices charged by Interpath to CP&L shall be the lower of market value or Interpath's fully distributed costs."

Paragraph 4(c) shall be changed by adding the following sentence at the end: CP&L shall not attempt, in any manner, to recover such late payment penalties and/or attorney's fees from CP&L's electric customers.

Paragraph 5(a) shall be changed to read as follows:

THE EXPRESS WARRANTIES SET FORTH IN THE DESIGNATED SCHEDULES (AS APPLICABLE) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY THE PARTIES. (The change in this paragraph is changing the word "Interpath" to "the Parties".)

Paragraph 5(b) shall be revised as follows:

The remedies set forth in this Agreement are the parties' sole and exclusive remedies for any claim or liability of any kind arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise. (The change being changing "CP&L's" to "the parties".)

The deletion of paragraph 5(c).

Changing old paragraph 5(d) to 5(c) and revising it as follows:

Neither party nor its employees, its subcontractors or suppliers shall be liable to the other party for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or nonperformance hereunder. In no event shall either party's liability to the other party arising out of or in connection with the performance or nonperformance of this Agreement exceed the price paid for the product or service giving rise to the liability. The provisions of this Section 5(c) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against either party must be brought within one (1) year after the cause of action accrues. (The primary changes to this paragraph involve insuring that the limitation of liability applies both ways.)

Paragraph 6 shall be revised as follows:

6. Delays. In no event shall either party be responsible to the other party for any damages arising out of any failure to perform or delay due to any cause beyond their reasonable control. In such event, the parties shall be entitled to an extension of time as necessary to overcome the cause of the failure to perform or delay. (The change is designed to make the paragraph apply both ways, to both parties.)

Schedule A to the Master Agreement for Telecommunication Services is revised by adding the following sentence at the very end of paragraph 5:

In no event shall any charges from Interpath to CP&L exceed the lower of market value or Interpath's fully distributed costs.

Schedule B to the Master Agreement for Telecommunication Services shall be revised by changing the second sentence in the first paragraph to read as follows:

CP&L agrees to purchase these other services from Interpath (Additional Services) at the lower of market value or Interpath's fully distributed costs established in separate contracts, tariffs, or price lists filed with the Commission or established by agreement of the parties, as set forth below:

3. With regard to the Master Agreement for Services a new paragraph 13 shall be inserted as follows:

This Agreement shall be subject to, and applied and interpreted in accordance with, the codes of conduct approved by the North Carolina Utilities Commission in Docket No. E-2, Sub 740 and the South Carolina Public Service Commission in Docket No. 1999-077-E.

Original paragraph 13 is changed to be paragraph 14.

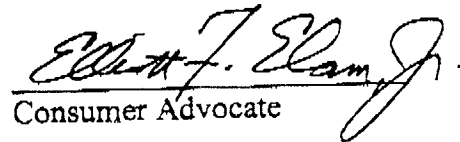
The second "whereas" clause is revised to read as follows:

WHEREAS, CP&L is willing and able to provide such services to Interpath, by and through CP&L employees, provided that Interpath fully reimburses CP&L for the higher of market value or CP&L's fully distributed costs of services rendered to Interpath.

4. With regard to the Assignment and Assumption Agreement, a new paragraph 4 shall be added that states the following:

This Agreement shall be subject to, and applied and interpreted in accordance with, the codes of conduct approved by the North Carolina Utilities Commission in Docket No. E-2, Sub 740 and the South Carolina Public Service Commission in Docket No. 1999-077-E.

  
Carolina Power & Light Co.

  
Consumer Advocate

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